105 CMR 650.000: HAZARDOUS SUBSTANCES

Section

650.001: Purpose

To establish the administration and enforcement of regulations concerning hazardous substances.

650.002: Authority

105 CMR 650.000 is adopted under the authority of M.G.L. c. 94B and 111, §§ 3, 5 and 6.

650.003: Scope

105 CMR 650.000 shall apply throughout the Commonwealth.

650.004: Statutory Definitions

Banned hazardous substance, any toy, or other article intended for use by children, which is a

hazardous substance, or which bears, contains a hazardous substance susceptible of access to a child, or is otherwise hazardous because it presents electrical, mechanical or thermal hazards; or any hazardous substance intended or packaged in a form suitable for use in households, which the commissioner by regulation classifies as a "banned hazardous substance" on the basis of a finding that notwithstanding cautionary labeling required under 105 CMR 650.000, the degree or nature of the hazard involved in the presence or use of the substance in households is such that the protection of the public health and safety can be adequately served only by keeping the substance out of the channels of commerce. The commissioner, by regulation, shall, however, exempt articles, such as chemical sets, which by reason of their functional purpose, require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate direction and warnings for safe use and are intended for use by children who have attained sufficient maturity and who may reasonably be expected to read and heed these warnings.

Combustible, any substance or mixture of substances which has a flash point from 80° to and including 150°F, as determined by the Tagliabue Open Cup Tester.

Commerce, any and all commerce within the commonwealth, including the operation of any business or service establishment.

Commissioner, the Commissioner of Public Health.

Corrosive, any substance which when in contact with living tissue will cause destruction of such tissue by chemical action.

Department, the Department of Public Health.

Director, the Director of the Division of Food and Drugs in the Department.

Division, the Division of Food and Drugs in the Department.

Electrical hazard, an article which in normal use, or when subjected to reasonably foreseeable damage or abuse by its design or manufacture, may cause personal injury or illness by electrical shock.

Extremely flammable, when used with respect to a substance, any substance which has a flash point at or below 20° as determined by the Tagliabue Open Cup Tester.

Flammable, when used with respect to a substance, any substance which has a flash point of above 20° to and including 80°F, as determined by the Tagliabue Open Cup Tester; when used with respect to all items of wearing apparel in sizes 0 through 6X intended to be worn primarily for sleeping or activities related to sleeping and for fabric or related material intended or promoted for use in such wearing apparel, which exceeds the acceptance criteria specified in the federal children's sleepwear standard, DOC FF 3-71, and determined by an appropriate test performed in accordance with said standard; or when used with respect to all items of wearing apparel in sizes seven through 14 intended to be worn primarily for sleeping or activities related to sleeping and for fabric or related

material intended or promoted for use in such wearing apparel, which exceeds the acceptance criteria specified in the federal children's sleepwear standard, FF 5-74, and determined by an appropriate test performed in accordance with said standard; provided, that the flammability of solids and of the contents of self-pressurized containers shall be determined by methods generally recognized as applicable to such containers and established by regulations issued by the commissioner.

Hazardous substance, any substance or mixture of substances which is toxic, corrosive, an irritant, a strong sensitizer, flammable or which generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonable foreseeable ingestion by children, or any toy or other article intended for use by children which presents an electrical, mechanical or thermal hazard. It shall include any radioactive substance if, with respect to such substance as used in a particular class of article or as packaged, the commissioner determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with 105 CMR 650.000 in order to protect the public health. It shall not include economic poisons subject to the Federal Insecticide, Fungicide and Rodenticide Act, unless the Commissioner finds that such economic poison is not adequately labeled for the protection of the public health, nor foods, drugs and cosmetics subject to the Federal Drug and Cosmetic Act or M.G.L. c. 94 nor substances intended for use as fuels when stored in containers and used in heating, cooking, or refrigeration systems. It shall include any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act but which is a hazardous substance within the meaning of this definition by reason of bearing or containing such economic poison.

Hazardous substances intended or packaged in a form suitable for use in the household, means any hazardous substance, whether or not packaged, that under any customary or reasonably foreseeable condition of purchase, storage, or use may be brought into or around a house, apartment, or other place where people dwell, or in or around any related building or shed including, but not limited to, a garage, carport, barn, or storage shed.

Highly toxic, when used with respect to a substance, any substance which:

(a) produces death within 14 days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered; or

(b) produces death within 14 days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or

(c) produces death within 14 days in half or more than half of a group of ten or more rabbits tests in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less; provided that if the commissioner finds that available data on human

experience with any substance indicate results different from those obtained on animals with the aforesaid dosages or concentrations, the human data shall take precedence.

Immediate container, excludes a package liner.

Inspector, an inspector of the division of food and drugs in the department.

Irritant, any substance not corrosive which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction. "Irritant" includes "primary irritant to the skin" as well as substances irritant to the eye or to mucous membranes. "Primary irritant" means a substance that is not corrosive and that human experience data indicate is a primary irritant. "Eye irritant" means a substance that human experience data indicate is an irritant to the eye.

Label, a display of written, printed or graphic matter upon the immediate container of any substance, or in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly on the article involved or on a tag or other suitable material affixed thereto. A requirement made by or under the authority of 105 CMR 650.000 that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and on all accompanying literature where there are directions for use, written or otherwise.

Mechanical hazard, an article which, in normal use or when subjected to reasonable foreseeable damage or abuse, by its design or manufacturer presents an unreasonable risk of personal injury or illness from fracture, fragmentation or disassembly of the article, from propulsion of the article or any part or accessory thereof, from points or other protrusions, surfaces, edges, openings or closures, from moving parts, from lack or insufficiency of controls to reduce or stop motion, as a result of self-adhering characteristics of the article, because the article or any part or accessory thereof may be aspirated or ingested, because of instability, or any other aspect of the article's design or manufacture.

Misbranded package or misbranded package of a hazardous substance, a hazardous substance in a container, or not in a container if the substance can be handled or transported without one, which is intended or suitable for household use or personal use and which, except as otherwise provided by or pursuant to 105 CMR 650.002, fails to bear a label which states prominently in the English language, in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label,

(a) the name and place of business of the manufacturer, packer, distributor or seller;

(b) the common or usual name or the chemical name, if there be no common or usual name, of the hazardous substance or of each component which contributes substantially to its hazard, unless the commissioner by regulation permits or requires the use of a recognized generic name;

(c) the signal word "DANGER" on substances which are corrosive, extremely flammable or highly toxic;

(d) the signal word "WARNING" or "CAUTION" on all other hazardous substances;
(e) an affirmative statement of the principal hazard or hazards, such as "FLAMMABLE", "VAPOR HARMFUL", "CAUSES BURNS", "ABSORBED THROUGH SKIN", or similar wording descriptive of the hazard;
(f) precautionary measures describing the action to be followed or avoided; except when modified by regulations of the commissioner pursuant to 105 CMR 650.002;
(g) instructions, when necessary or appropriate, for first-aid treatment;
(h) the word "POISON" for any hazardous substance which is defined as "HIGHLY TOXIC" by 105 CMR 650.004;
(i) instructions for handling and storage of packages which require special care in handling or storage; and
(j) the statement "KEEP OUT OF THE REACH OF CHILDREN", or its practical equivalent.

Person, includes an individual, partnership, corporation, association, or legal representative or agent.

Proximate result means a result that follows in the course of events without an unforeseeable, intervening, independent cause.

Radioactive substance, a substance which emits ionizing radiation.

Reasonably foreseeable handling or use includes the reasonably foreseeable accidental handling or use, not only by the purchaser or intended user of the product, by all others in a household, specially children.

Snuff, is a form of smokeless tobacco, often referred to as such, which is a finely ground or cut tobacco mixture that is intended to be placed in the oral cavity.

Strong sensitizer, a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the commissioner. Before designating any substance as a strong sensitizer, the commissioner, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.
(a) Strong allergic sensitizer, is a substance that produces an allergenic senitization in a substantial number of persons who come into contact with it. An allergic sensitization develops by means of an "antibody mechanism" in contradistinction to a primary irritant reaction which does not arise because of the participation of an "antibody mechanism". An allergic reaction ordinarily does not develop on first contact because of necessity or prior exposure to the substance in question. The sensitized tissue exhibits a greatly increased capacity to react to subsequent exposures of the offending agent. Subsequent exposures may therefore produce severe reactions with little correlation to the amount of excitant involved.
(b) Photodynamic sensitizer, is a substance that causes an alteration in the skin or mucous membranes in general or to the skin or mucous membrane at the site of contact so that when these areas are subsequently exposed to ordinary sunlight (or equivalent radiant energy) an inflammatory reaction will develop.

Substantial personal injury or illness means any injury or illness of a significant nature. It need not be severe or serious. What is excluded by the word "substantial" is a wholly insignificant or negligible injury or illness.

Thermal hazard, an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

Toxic, when used with respect to a substance, any substance, other than a radioactive substance, which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

650.005: Supplemental Definitions

(1) Toxic.
(a) To give specificity to the definition of "toxic" in 105 CMR 650.004(28), the following supplements that definition: "Toxic" means any substance that produces death within 14 days in half or more than half of a group of:
1. White rats (each weighing between 200 and 300 grams) when a single dose of from 50 milligrams to five grams per kilogram of body weight is administered orally.
2. White rats (each weighing between 200 to 300 grams) when an atmospheric concentration of more than 200 parts per million but not more than 20,000 parts per million by volume of gas or vapor, or more than two but not more than 200 milligrams per liter by volume of mist or dust is inhaled continuously for one hour or less, if such concentration is likely to be encountered by humans when the substance is used in any reasonably foreseeable manner; and/or
3. Rabbits (each weighing between 2.3 and 3.0 kilograms) when a dosage of more than 200 milligrams but not more than two grams per kilogram of body weight is administered by continuous contact with the bare skin for 24 hours by the method described in 16 CFR § 1500.40 which is incorporated herein by reference.
(b) The number of animals tested shall be sufficient to give a statistically significant result and shall be in conformity with good pharmacological practices.
(c) "Toxic" also applies to any substance that is "TOXIC" (but not "HIGHLY TOXIC") on the basis of human experience.

(2) Irritant. The definition of "irritant" in 105 CMR 650.004(17) is supplemented by the following: "Irritant" includes "primary irritant to the skin" as well as substances irritant to the eye or to mucous membranes. "Primary irritant" means a substance that is not corrosive and that human experience data indicate is a primary irritant and/or means a substance that results in an empirical score of five or more when tested by the method described in 16 CFR § 1500.41 which is incorporated herein by reference. "Eye irritant" means a substance that human experience data indicates is an irritant to the eye and/or means a substance for which a positive test is obtained when tested by the method described in 16 CFR § 1500.42 which is incorporated herein by reference.

650.006: Incorporation of Findings Made Pursuant to the Federal Hazardous Substances Act,

15 USC
§ 1261 *et seq.* (FHSA)

(1) Hazardous and Banned Hazardous Substances. Any substance, mixture, or article found to be a hazardous substance or a banned hazardous substance pursuant to the FHSA is deemed such for all purposes under M.G.L. c. 94B and regulations promulgated there under.

(2) Toxic, Highly Toxic, Irritant, Strong Sensitizer and other Substances. Any substance, mixture, or article found to be toxic, highly toxic, an irritant, a strong sensitizer, corrosive, flammable or pressure generating pursuant to the FHSA is deemed such for all purposes under M.G.L. c. 94B.

650.010: Hazardous Mixtures

For a mixture of substances, the determination of whether the mixture is a "hazardous substance" should be based on the physical, chemical, and pharmacological characteristics of the mixture. A mixture of substances may therefore be less hazardous or more hazardous than its components because of synergistic or antagonistic reactions. It may not be possible to reach a fully satisfactory decision concerning the toxic, irritant, corrosive, flammable, sensitizing, or pressure-generating properties or a substance from what is known about its components or ingredients. The mixture itself should be tested.

650.015: Listing of Toxic Substances

The commissioner finds the following substances to be toxic:

(1) Formaldehyde.

(2) Urea-formaldehyde foamed-in-place insulation.

(3) Snuff.

650.016: Listing of Irritants

The Commissioner finds the following substances to be irritants:

(1) Formaldehyde.

(2) Urea-formaldehyde foamed-in-place insulation.

(3) Snuff.

650.017: Listing of Hazardous Substances

The commissioner declares the following substances to be hazardous substances:

(1) Formaldehyde.

(2) Urea-formaldehyde foamed-in-place insulation.

(3) Snuff.

650.020: Listing of Banned Hazardous Substances

The commissioner declares the following articles to be banned hazardous substances and requires their removal from commerce:
Urea-formaldehyde foamed-in-place insulation.

650.100: Substances Determined to be Special Hazards

If the Commissioner finds that the requirements of M.G.L. c. 94B, § 1, as to labeling of a "misbranded hazardous substance" are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, he may by regulation establish such reasonable variations or additional label requirements as he finds necessary for the protection of the public health and safety; and any hazardous substance intended, or packaged in a form suitable, for use in the household or by children which fails to bear a label in accordance with 105 CMR 650.000 shall be deemed to be a misbranded hazardous substance.

650.105: Labeling of Tobacco Snuff

Any container or package of tobacco snuff shall be deemed to be misbranded unless it bears the warning statements required pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986. Any container or package of tobacco snuff so labeled shall not be deemed misbranded for failure to comply with the requirements of 105 CMR 650.004(20).

650.220: Repurchase of Banned Hazardous Substances

(1) Definitions used for the purposes of 105 CMR 650.000.
(a) manufacturer includes any person who manufacturers or imports an article or substance for distribution or sale, including importers for resale, except that in the case of an article or substance distributed or sold under a name other than that of the actual manufacturer of the article or substance, the term "manufacturer" includes any person under whose name the article or substance is distributed or sold.
(b) distributor includes any person, including any person who would otherwise be considered a dealer, who sells an article or substance at wholesale.
(c) dealer includes any person who sells an article or substance at retail.
(d) purchase price means the amount of money paid to acquire an article or substance, including all taxes, but excluding transportation or shipping costs and finance, interest, or service charges.
(e) reasonable and necessary transportation charges, when used in connection with the return of an article or substance to a dealer, means:

1. the actual costs incurred in returning the product in any manner reasonably specified by the dealer, including personal conveyance; or
2. the actual costs incurred in returning the products by mail, commercial carrier, or any other manner, including personal conveyance, reasonably utilized in the absence of specific instructions by the dealer.

(f) reasonable and necessary expense when used in connection with the return of an article or substance to a distributor or manufacturer shall include the cost of labor, administration and transportation in the handling, processing, and shipping of that product.

(2) Repurchase. In the case of any article or substance sold by its manufacturer, distributor, or dealer which is a banned hazardous substance, whether or not it was such at the time of its sale, such article or substance shall, in accordance with regulations of the commissioner, be repurchased as follows:

(a) The manufacturer of any such article or substance shall repurchase it from the person to whom he sold it, and shall refund to that person the purchase price paid for such article or substance. If that person repurchased such article or substance pursuant to the provisions of 105 CMR 650.220, the manufacturer shall reimburse him for any amounts paid in connection with its repurchase, and reimburse such person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(b) The distributor of any such article or substance shall repurchase it from the person to whom he sold it, and shall refund to that person the purchase price paid for such article or substance. If that person has repurchased such article or substance pursuant to the provisions of 105 CMR 650.220, the distributor shall reimburse him for any amounts paid for the return of such article or substance in connection with its repurchase and reimburse that person for any reasonable and necessary expenses incurred in returning it to the distributor.

(c) In the case of any such article or substance sold at retail by a dealer, if the person who purchased it from the dealer returns it to him, the dealer shall refund the purchase price paid for it and reimburse him for any reasonable and necessary transportation charges incurred in its return.

650.221: Modification or Replacement of Banned Hazardous Substances in Lieu of Repurchase

(1) Scope. 105 CMR 650.221 clarifies and sets forth the conditions whereby repurchase of an banned hazardous article or substance will not be required under 105 CMR 650.220. Generally, repurchase will not be required whenever, with the consent of the owner, the banned hazardous article or substance is replaced or modified so that it no longer meets the definition of a banned hazardous article or substance. 105 CMR 650.221 does not apply to the repurchase of urea-formaldehyde foamed-in-place insulation (UFFI), which is governed by 105 CMR 650.222.

(2) Modification. Any article or substance which is a "banned hazardous substance" (including any article or substance which became a banned hazardous substance because of some alteration which occurred after its introduction into

interstate commerce and before its sale to an ultimate consumer) but which is thereafter modified so that it is no longer a banned hazardous substance shall not be subject to repurchase. Provided, however, that if the owner of a particular product which is a banned hazardous substance (for reason other than an alteration by the owner) will not consent to modification of the product as an alternative to repurchase, the obligation of the party shall not be affected by the provisions of 105 CMR 650.221.

(3) Replacement. Any party who is obligated to repurchase an article which is a banned hazardous substance may replace it with an equivalent product which is not a banned hazardous substance. Provided, however, that if the owner of the particular product which is a banned hazardous substance (for reason other than an alteration by the owner) will not consent to replacement with an equivalent product which is not a banned hazardous substance, the obligation of the party who sold the banned hazardous substance to repurchase that product and refund the purchase price shall not be affected by the provisions of 105 CMR 650.221.

(4) Expenses. In any case where a manufacturer, distributor, or dealer elects to offer to modify a banned hazardous substance or to replace it with an equivalent product which is not a banned hazardous substance as an alternative to repurchase, all expenses incurred in connection with the modification or replacement shall be borne by the party originally offering the modification or replacement.

650.222: Repurchase of Urea-Formaldehyde Foamed-In-Place Insulation (UFFI)

(1) Definitions. For the purposes of 105 CMR 650.222, the following terms shall have the following meanings:

Component ingredients of UFFI means urea-formaldehyde resin and foaming agent.

Consumer means the owner of a dwelling who requests repurchase or his/her attorney or other authorized representative.

Department means the Department of Public Health.

Distributor means any person, including any person who would otherwise be considered a dealer or installer, who sold UFFI or component ingredients of UFFI at wholesale.

Industry member means an installer, distributor, or manufacturer of UFFI or his/her attorney or other authorized representative.

Installer means any person who made a retail sale of UFFI.

Whenever a document is hand-delivered pursuant to 105 CMR 650.222, mailing date means the date the document was received.

Manufacturer means any person who manufactured UFFI or component ingredients of UFFI for distribution or sale, including importers for resale. In the case of UFFI or component ingredients of UFFI distributed or sold under a name other than that of the actual manufacturer, the term "manufacturer" also includes any person under whose name the UFFI was distributed or sold.

Party means any installer, distributor, or manufacturer who requests an adjudicatory hearing, and the consumer.

(2) Request for Repurchase; Exemption From Liability For Contributing Industry Member

(a) UFFI shall be repurchased on request as provided by 105 CMR 650.222, except that an industry member that has contributed a reasonable amount to the UFFI Trust Fund created pursuant to St. 1985, c. 728, § 4, as determined by the Commissioner, shall have no liability or obligation under these regulations, including the obligation to repurchase UFFI from any consumer, manufacturer, distributor or installer.

(b) Any document required by 105 CMR 650.222 to be submitted to the Department in connection with a particular repurchase case shall be submitted in duplicate.

(c) An owner of a UFFI-insulated building shall request repurchase by providing the following documents to the Department:

1. A statement signed under the pains and penalties of perjury, and a copy thereof, stating:

a. that s/he requests that UFFI be repurchased from a building located at a specific address;

b. that s/he is an owner of said building;

c. that UFFI was installed in said building, stating the date of installation, if known, and, if the person requesting repurchase was not the person who purchased the UFFI, the name of the person who purchased the UFFI, if known;

d. if s/he is not residing in the UFFI-insulated building, her/his present address; and

e. the names and addresses, if known, of the installer, distributor, and manufacturer of the UFFI installed in said building. If more than one name or address is known for any given installer, distributor or manufacturer, all names and addresses shall be provided. The name of at least one industry member must be provided in order to initiate a repurchase case; and

2. Two copies of each written contract or communication in her/his possession between the original purchaser of the UFFI and the installer, distributor or manufacturer of the UFFI installed in her/his building.

(d) Requests for repurchase shall be made within the following time deadlines:

1. An owner of a UFFI-insulated building shall request repurchase within 18 months after the date that s/he became an owner of the building, or on or

before July 1, 1991, whichever is later.

2. No request for repurchase shall be made after November 19, 2000.

(3) Service on Industry.

(a) If the identity of the installer, distributor or manufacturer of the particular UFFI in question is known to the consumer or the Department:

1. After receipt of the documents described in 105 CMR 650.222(2)(c), the Department shall provide to each such industry member whose identity is known:

a. a copy of the documents described in 105 CMR 650.222(2)(c);

b. a notice of right to adjudicatory hearing; and

c. a list of the industry members to whom said documents and notice were provided.

2. With respect to repurchase cases pending before the Department on July 1, 1987, the Department shall provide to each such industry member whose identity is known the documents described in 105 CMR 650.222(3)(a)1.b. and c., within a reasonable time after July 1, 1987.

3. The notice of right to adjudicatory hearing shall state that the industry member may request an adjudicatory hearing to determine the factual issue as to whether it supplied the particular UFFI in question or any of its component ingredients, and shall include a form which may be used by the industry member to request an adjudicatory hearing. The notice shall also state that if it requests an adjudicatory hearing, the industry member may at the same time request to sample and analyze the UFFI in accordance with the procedures specified in 105 CMR 650.222(5).

4. Any industry member who receives notice from the Department pursuant to 105 CMR 650.222(3)(a)1. or 2. shall, no later than 14 days after the mailing date of said notice, provide in duplicate to the Department a list of names and addresses of any other installer(s), distributor(s), or manufacturer(s) whom s/he knows or has reason to believe was (were) involved in manufacturing, distributing, installing or selling the UFFI in question or the component ingredients of the UFFI in question. Upon receipt of such list(s), the Department shall immediately notify each industry member so identified of the request for repurchase and each such industry member shall have the right to request an adjudicatory hearing.

5. Any notice sent by the Department pursuant to 105 CMR 650.222 may be by hand delivery; by ordinary mail, postage prepaid; by certified mail, return receipt requested; or by any means determined to be reasonable by the Department.

(b) If any manufacturer, distributor or installer of the particular UFFI in question is not known to the consumer or to the Department, or has not been identified by any other installer, distributor or manufacturer:

1. This shall not prejudice in any way the right of the consumer to secure a Certificate of Right to Repurchase entitling her/him to repurchase by any industry member who has been identified, except as provided in 105 CMR

650.222(2)(a).

2. The period within which repurchase must be requested will not begin to run as against unidentified industry members until they have been identified. Regardless of the time that the identity of a previously unidentified industry member is discovered, the consumer shall have the right to proceed against the newly discovered industry member by amending or filing a new request for repurchase within 18 months of such discovery. Once any industry member has repurchased UFFI from the consumer, however, the consumer has no further right to repurchase.

(c) Within 30 days after July 1, 1987, all distributors and manufacturers who have sold UFFI or component ingredients of UFFI in Massachusetts shall mail or hand-deliver the following to the Department, if they have not already done so:

1. A list of all known or ascertainable names and addresses of manufacturers, distributors and installers with whom they have done business; and

2. A list of all known or ascertainable names and addresses of persons who have made retail purchases of UFFI, the component ingredients of which were manufactured or distributed by them.

(d) The lists described in 105 CMR 650.222(3)(c) shall include all names and addresses which are known or which can be discovered by reasonably diligent efforts, and all names and addresses which are in the possession, custody or control of the distributor or manufacturer. "Possession, custody or control" includes possession, custody or control by any person acting or purporting to act on behalf of the distributor or manufacturer whenever the distributor or manufacturer has knowledge that said person is acting or purporting to act on her/his behalf.

(4) Request for Adjudicatory Hearing.

(a) Any industry member upon whom a request for repurchase has been served pursuant to 105 CMR 650.222(3) may request an adjudicatory hearing to determine the factual issue as to whether it supplied the particular UFFI in question or any of its component ingredients. The industry member shall request an adjudicatory hearing by providing a request for adjudicatory hearing in duplicate to the Department, no later than 21 days after the mailing date of the notice of right to adjudicatory hearing.

(b) At the time that it requests an adjudicatory hearing, the industry member requesting the hearing shall provide in duplicate to the Department, and to the consumer, copies of any written contracts or communications in its possession between it and the original purchaser of the UFFI in question, if it has not previously provided copies of said contracts or communications to the Department and to the consumer.

(c) If the industry member requesting an adjudicatory hearing wishes to sample and analyze the UFFI in accordance with 105 CMR 650.222(5), it shall provide notice of intent to sample UFFI in duplicate to the Department, and to the consumer, at the time that it requests an adjudicatory hearing.

(d) After the deadline for requesting an adjudicatory hearing has passed, the Department shall notify all parties of the identity of the parties who have requested a hearing, and whether any parties have given notice of intent to sample UFFI. The Department shall also notify the consumer that s/he may give notice of intent to sample and analyze the UFFI as set forth in 105 CMR 650.222(5)(c).

(e) Each case in which an adjudicatory hearing has been timely requested shall be assigned to a hearing officer designated by the Commissioner. If more than one hearing officer is designated by the Commissioner to conduct adjudicatory hearings, cases shall be randomly assigned to the hearing officers.

(5) Sampling and Analysis of UFFI.

(a) 105 CMR 650.222(5) governs the taking of samples of the UFFI for testing and analysis, for the purpose of gathering evidence on the question of who supplied the UFFI or any of its component ingredients. Said testing is not for the purpose of determining the formaldehyde emissions from the UFFI, and no evidence of emissions shall be admitted or considered at the adjudicatory hearing.

(b) Any party may initially give notice of intent to sample UFFI. Any party who does not give such notice, but who wishes to analyze a sample of UFFI after receiving the results of another party's analysis of the UFFI, may do so within 45 days after receipt of those results, as provided in 105 CMR 650.222(5)(k).

(c) An industry member party shall give initial notice of intent to sample UFFI at the time that it requests an adjudicatory hearing, as provided in 105 CMR 650.222(4)(c). The industry member shall send two copies of this notice to the Department, and one copy to the consumer. A consumer party shall give initial notice of intent to sample UFFI within 14 days after the mailing date of the Department's notice, pursuant to 105 CMR 650.222(4)(d), that an adjudicatory hearing has been requested. The consumer shall send two copies of this notice to the Department, and one copy to each of the other parties to the case.

(d) The sample taking shall be scheduled at a prehearing conference, as provided by 105 CMR 650.222(6)(c).

(e) The results of the analysis of a sample or samples of the particular UFFI submitted by any party shall be admissible in evidence at the adjudicatory hearing only if the sample was taken and analyzed, and the results and other information are reported, as required by 105 CMR 650.222(5).

If any party takes more than one sample of UFFI, then the results of the analysis of any sample shall be admissible in evidence at the adjudicatory hearing only if all samples are analyzed by that party and the results of all analyses are reported by that party as required by 105 CMR 650.222(5)(j).

(f) Samples shall be taken in the presence of the consumer, the industry member who gave notice of intent to sample, if there is one, and any other industry member parties who wish to be present.

(g) If possible, samples shall be taken of UFFI which is accessible without damaging a wall, ceiling or other part of the building; for example, from areas exposed by temporarily removing electrical boxes, fixtures or cover plates, or

from exposed areas in the attic or basement.

With the permission of the person requesting repurchase, samples may be taken by procedures which may damage a wall, ceiling or other part of the building; for example, by making a hole in a wall or ceiling, or by removing a floor board, clapboard, shingle, or door or window casing. On motion of an industry member, the hearing officer shall order the person requesting repurchase to allow a sample or samples to be taken by procedures which may cause damage if the hearing officer finds that a representative sample or samples cannot be obtained from UFFI which is accessible without causing damage.

If the sampling is done at the request of an industry member, the industry member shall promptly repair and restore to its original condition any part of the building which is damaged in the course of taking the sample.

(h) Each sample shall be taken and handled by methods which prevent contamination. Each sample shall be split into roughly equal parts, the number of parts corresponding to the number of industry members present at the sample taking, plus two. Each part shall be placed in a clean container, tightly covered, and sealed with tape. The tape itself shall be initialed by all parties present at the sample taking. For each sample, one container shall be given to each industry member present at the sample taking, one container shall be given to the consumer, and one container shall be sent to the Food and Drugs Laboratory, State Laboratory Institute, 305 South Street, Jamaica Plain, MA 02130. The outside of the latter package shall be clearly labeled "UFFI Sample".

Each container shall be labeled, in the presence of all parties present at the sample taking, with the following information:

1. The name of the person who requested repurchase;
2. The address of the building;
3. The date the sample was taken; and
4. An identifying number specific to each sample taken in the building.

At the time that the sample(s) are taken, an information sheet shall be completed which contains the following information:

5. The name of the person who requested repurchase;
6. The address of the building;
7. The names of all parties present at the sample taking;
8. The date of the sample taking;
9. For each sample:
    a. The sample number;
    b. The location in the building from which the sample was taken; and
10. The following statement signed by all parties present at the sample taking: "I have observed the taking of the sample(s) listed above, and I concur that the information contained on this form is accurate."

Each party present at the sample taking shall keep one copy of the information sheet, one copy shall be sent to the Food and Drugs Laboratory accompanying the sample container(s), and two copies shall be sent to the Department for inclusion in the case file.

(i) If UFFI has been previously removed from the building and a portion has

been retained by the consumer, that portion may be used for testing and analysis. The consumer shall provide a sample to each industry member who has given notice of intent to sample the UFFI, and to the Food and Drugs Laboratory as provided in 105 CMR 650.222(5)(h). In addition, the person requesting repurchase shall sign a statement under the pains and penalties of perjury stating that the UFFI from which samples have been obtained was removed from the building for which repurchase is being requested, and stating the approximate date of such removal. A copy of the statement shall be provided to the other parties to the case and two copies shall be provided to the Department.

(j) Any party who analyzed a sample or samples of UFFI, and who intends to offer the results in evidence at the hearing, shall provide to the Food and Drugs Laboratory, to each other party to the hearing, and in duplicate to the Department, the following information within 45 days after the sample(s) were taken:

1. A detailed description of the analysis protocol(s) and the protocol(s) of any confirmatory tests, including:
    a. The name of the analysis method;
    b. The formulas of all reagents and standard solutions;
    c. The sample preparation and handling techniques;
    d. Any time, temperature or pressure requirements;
    e. The possible sources of false positive and false negative interferences;
    f. The steps taken to prevent or confirm the absence of false positive and false negative interferences;
    g. The limits of delectability and the potential margin for error of the method used;
    h. A description of all equipment used; and
    i. The method of calibrating all equipment used.
2. Copies of all raw data including:
    a. The notes made by the analyst(s); and
    b. All printouts, tracings or spectra generated by any machine used.
3. A statement of the results of the analysis and of any confirmatory test(s).
4. A detailed explanation of the basis upon which it is claimed that the analysis is probative as to the issue of who supplied the particular UFFI. If the purpose of the analysis is to establish the existence, absence or quantity of a particular chemical or chemicals, or to establish the formulation of the UFFI, then the explanation required by this paragraph shall include:
    a. A quantitative and qualitative description of any such chemical(s) or formulation;
    b. The exact time period(s) during which any particular industry member or members is claimed to have used any such chemical(s) or formulation;
    c. The range or tolerance of the quantity of the chemical(s) which any particular industry member is claimed to have used;
    d. The stability of the chemical(s) or formulation which any particular industry member is claimed to have used; and

e. The basis upon which it is claimed that a particular formulation, or the existence, absence or specific quantity of a particular chemical or chemicals is unique to a particular industry member.

A consumer who has analyzed a sample of UFFI shall provide the information specified in 105 CMR 650.222(5)(j)4. only to the extent that such information is known to the consumer.

(k) Any party who receives from another party the information specified in 105 CMR 650.222(5)(j), may analyze his/her sample or samples of the UFFI within 45 days after such receipt. If such analysis takes place and if the party intends to offer the results in evidence at the hearing, the party shall provide to the Food and Drugs Laboratory, to each other party, and in duplicate to the Department, the information specified in 105 CMR 650.222(5)(j)1. through 3. The party shall likewise file and provide the information specified in 105 CMR 650.222(5)(j)4. to the extent that information is known to the party.

(l) Time limits for sampling and analysis specified in 105 CMR 650.222(5) may be extended by the hearing officer for good cause.

(6) Adjudicatory Hearings.

(a) Any adjudicatory hearings which concern the UFFI in a particular building which is the subject of the same request for repurchase may be consolidated.

(b) The hearing officer shall conduct the hearing in accordance with the Adjudicatory Rules of Practice and Procedure, Formal Rules, 801 CMR 1.01 and 1.03, in so far as such Adjudicatory Rules are consistent with 105 CMR 650.000.

(c) In advance of the hearing, a prehearing conference may be held for the purposes specified in 801 CMR 1.01(10)(a), and shall be held for the purpose of scheduling the sample taking in those cases in which any party has given notice of intent to sample UFFI.

(d) The hearing officer shall expeditiously schedule the hearing, taking into account the intent of any party or parties to sample and analyze UFFI within the time periods allowed by 105 CMR 650.222(5).

(e) At the hearing, the consumer shall have the burden of showing that the UFFI or any component ingredient thereof was installed, distributed or manufactured by any particular party, by a preponderance of the evidence.

(f) At the hearing, the parties may present evidence on the following issues:

1. who did or did not supply the particular UFFI in question or any of its component ingredients, including evidence pursuant to 105 CMR 650.222(5);
2. whether or not the person requesting repurchase is an owner of the building;
3. whether or not UFFI was installed in the building;
4. whether or not the request for repurchase was timely filed; and
5. whether or not the sampling and analysis of UFFI was conducted in accordance with 105 CMR 650.222(5).

(g) Evidence admitted at the hearing may be in the form of:

1. testimony, including expert testimony;
2. documentary evidence, including, but not necessarily limited to

promotional materials, contracts, warranties, and receipts; and

3. the results of the analysis of a sample or samples of the particular UFFI, admitted in accordance with 105 CMR 650.222(5)(e), and 650.222(6)(h).

(h) The results of an analysis of a UFFI sample or samples conducted by the Food and Drugs Laboratory of the Department shall be admissible in evidence at the hearing only if the hearing officer finds that the results of the analyses submitted by a party or parties are inconclusive and that additional testing is warranted in order to determine who manufactured, distributed or installed the particular UFFI in question or any of its component ingredients. Upon making such a finding, the hearing officer may request that the Department conduct such an analysis. Upon such request, it shall be within the discretion of the Department whether or not to conduct such an analysis. If the Department conducts such an analysis, it shall provide the results to each party to the hearing and in duplicate to the hearing officer, together with the information listed in 105 CMR 650.222(5)(j)1., 2., and 3.

(i) No other evidence may be admitted or considered. Evidence that may not be admitted or considered includes, but is not limited to, the following:

1. test results relating to the formaldehyde content of any air sample;
2. evidence tending to show the presence of any possible source of formaldehyde other than UFFI; and
3. evidence relating to the presence or absence of adverse health effects in any occupant of the building in question.

(j) The hearing officer shall, in his/her discretion, determine the weight to be given to any evidence. No particular type of evidence shall be presumed to be conclusive.

(k) If the UFFI has been removed from the building before July 1, 1986, and no portion has been retained, and any industry member party desires to sample the UFFI, the hearing may nevertheless take place. The hearing officer shall render a decision based on the evidence that is presented.

(l) The hearing officer shall issue a tentative decision containing a statement of reasons and including a determination of each issue of fact or law necessary to the decision. The decision shall also include a recommendation of the issuance of a Certificate of Right to Repurchase which will name each particular installer, distributor, and manufacturer whom the hearing officer determines has supplied the particular UFFI in question or any of its component ingredients. In addition, the recommendation shall include the names of those industry members who were notified of their right to request an adjudicatory hearing and who did not request a hearing.

(m) If and only if any party to the adjudicatory hearing so requests in writing to the hearing officer prior to the close of the hearing, the Department shall provide copies of the tentative decision to all parties. Each party adversely affected by the tentative decision may then file objections and present arguments in writing to the Commissioner, within seven days after receipt of the tentative decision.

(7) Final Decision and Certificate of Right to Repurchase.

(a) The Commissioner shall determine whether to adopt the tentative decision

of the hearing officer and shall issue a final decision as provided in M.G.L. c. 30A, § 11(8). A copy of the decision and of the Certificate of Right to Repurchase, if there is one, shall be provided to each party. The decision of the Commissioner and his issuance or non-issuance of a Certificate of Right to Repurchase after an adjudicatory hearing shall be a final agency decision and shall be reviewable pursuant to M.G.L. c. 30A, § 14.

(b) In any case in which no industry member timely requests an adjudicatory hearing, the Commissioner shall issue to the consumer a Certificate of Right to Repurchase which names each installer, distributor or manufacturer who was properly notified of its right to request an adjudicatory hearing and who did not request a hearing. A copy of the Certificate shall be mailed to each industry member named therein.

(c) The Commissioner shall issue a Certificate of Right to Repurchase in any case in which the consumer and any industry member agree that a Certificate shall be issued naming that particular installer, distributor, or manufacturer. The Certificate shall be provided to the consumer, and a copy shall be provided to the industry member.

(8) Use of Certificate of Right to Repurchase.

(a) The Certificate of Right to Repurchase shall entitle the consumer to repurchase of UFFI by any industry member identified in the Certificate in accordance with the following procedures. Upon receipt of a Certificate of Right to Repurchase, the consumer may mail or hand-deliver a copy of the Certificate to any one industry member identified in the Certificate, together with a letter or form requesting the repurchase of UFFI by that particular industry member. Any industry member identified in a Certificate who receives a Certificate as provided in this way shall repurchase UFFI as required by 105 CMR 650.222(9), (10), or (11).

(b) Any industry member who repurchases UFFI shall notify any other industry member identified in the Certificate of Right to Repurchase that s/he is repurchasing UFFI no later than seven days after the mailing date of the Certificate.

(c) 1. If the industry member who has received a Certificate of Right to Repurchase

from the consumer pursuant to 105 CMR 650.222(8)(a) fails to comply with the provisions of 105 CMR 650.222(9)(b)2. through 8., the consumer may secure estimates and follow the procedure outlined in 105 CMR 650.222(9)(b)9. In addition to any other available remedies against the industry member who has failed to comply, the consumer may at the same time mail or hand-deliver the Certificate to another industry member identified in the Certificate.

2. If the industry member who has received a Certificate of Right to Repurchase from the consumer pursuant to 105 CMR 650.222(8)(a) fails to comply with the provisions of 105 CMR 650.222(10)(c), in addition to any other available remedies against the industry member who has failed to comply, the consumer may mail or hand-deliver the Certificate to another industry member named in the Certificate.

3. However:

a. Once any installer, distributor or manufacturer has repurchased UFFI,

the consumer has no right to repurchase by any other installer, distributor or manufacturer; and

b. The consumer shall not mail or hand-deliver the Certificate to more than one industry member identified in said Certificate unless the installer, distributor or manufacturer to whom the Certificate has been presented has failed to comply with the provisions of 105 CMR 650.222(9)(b)2. through 8. or (10)(c).

(9) Method of Repurchase Where UFFI Has Not Been Removed From the Building.

(a) Repurchase of UFFI shall be made by removing the insulating material, restoring, in a work-person-like manner, all structures damaged, altered or removed in the process of removing the insulation, and refunding the purchase price.

(b) The removal of the insulating material and the restoration of all structures altered, damaged or removed in the process shall proceed as follows:

1. The consumer shall choose two persons engaged in the construction business in Massachusetts who have been certified in accordance with 105 CMR 651.009(6), Program for Air Testing and Remedial Measures for Residential Dwellings Insulated with Urea Formaldehyde Foam Insulation (UFFI) (hereinafter "certified contractors"). S/he shall mail or hand deliver the names and addresses of these two certified contractors to the industry member to whom s/he presents the Certificate of Right to Repurchase (hereinafter "the responsible person").

2. No later than 14 days after the mailing date of said names and addresses, the responsible person shall enter into negotiations with said contractors concerning a contract for removal of UFFI and restoration of the building. The responsible person shall notify the consumer in writing that said negotiations have commenced. Said notice shall be received by the consumer no later than 21 days after the mailing date of said names and addresses.

3. No later than 30 days after the mailing date of the names and addresses of the two contractors, the responsible person shall enter into a contract with one of the two contractors for the removal of UFFI and the restoration of the building. The responsible person shall pay the cost of removal and restoration as provided in said contract. The responsible person shall mail or hand-deliver a copy of said contract to the consumer as soon as it is executed.

4. Every contract entered pursuant to 105 CMR 650.222(9)(b)3. shall be performed in accordance with the specifications set forth in the Massachusetts Department of Public Health's *Training Manual on Corrective Measures for Homes Insulated with Urea Formaldehyde Foam Insulation*, a copy of which is available at the Department.

5. Any contract entered pursuant to 105 CMR 650.222(9)(b)3. shall be completed within a reasonable time.

6. No consumer shall be asked or required to waive any rights hereunder or under any statute or regulation or at common law in order to exercise the right of repurchase.

7. No provision of any contract entered pursuant to 105 CMR 650.222(9)(b)3 shall limit the rights of the consumer under 105 CMR 650.222.

8. The consumer waives no rights by permitting any person access to her/his building in order to permit performance of any contract entered pursuant to 105 CMR 650.222(9)(b)3.

9. In the event that the responsible person does not comply with any provision of 105 CMR 650.222(9)(b)2. through 8. the consumer may secure two estimates of the cost of removal and restoration from any two certified contractors. The consumer shall mail or hand-deliver to the responsible person copies of these estimates plus a statement of the cost of securing these estimates. The responsible person shall then pay the lowest of these two estimates, plus the cost of securing the two estimates and an amount equal to the purchase price paid by the retail purchaser to the installer for installation of UFFI into the building in question. These payments shall be made no later than 14 days after the mailing date of the estimates. The consumer shall then engage either of the two certified contractors to remove the UFFI from her/his building.

(c) Unless 105 CMR 650.222(8)(c) or (9)(b)9. applies, an amount equal to the purchase price paid by the retail purchaser to the installer for installation of UFFI into the building in question shall be refunded to the consumer no later than seven days after the commencement of work pursuant to the contract entered under 105 CMR 650.222(9)(b)3.

(10) Method of Repurchase When UFFI Has Been Removed From the Building Before July 1, 1986.

(a) If UFFI has been removed from the building prior to July 1, 1986, the consumer shall utilize his/her Certificate of Right to Repurchase, and repurchase shall proceed, as provided in 105 CMR 650.222(10).

(b) After receipt of a Certificate of Right to Repurchase in accordance with the procedures specified in 105 CMR 650.222, the consumer shall mail or hand-deliver to the responsible person the following documents:

1. a statement signed by the person who requested repurchase under the pains and penalties of perjury stating:

a. That UFFI has been removed from a building of which s/he is an owner;

b. The approximate date UFFI was removed from said building;

c. The name(s) and address(es) of the person(s) who removed the UFFI and of the person(s) who restored the building;

d. The cost of removing the UFFI and restoring, in a work-person-like manner, all structures damaged, altered or removed in the process of such removal; and

e. That said cost includes the cost of exposing and removing the UFFI, treating the cavity, and restoring the building, and does not include any cost unrelated to said removal and restoration;

2. a copy of any contract(s) for the removal of UFFI and restoration of the

building. Said contract(s) shall describe the work contracted for and the cost of said work; and

3. a copy of the Certificate of Right to Repurchase.

(c) Within 21 days after the mailing date of the documents described in 105 CMR 650.222(10)(b), the responsible person shall pay the consumer the cost of removing UFFI and restoring the building as stated in said statement or contract(s), and an amount equal to the purchase price paid by the retail purchaser for the installation of UFFI into the building in question.

(d) A Certificate of Right to Repurchase shall not issue to a consumer who, without following the procedures set forth in 105 CMR 650.222(9), removed UFFI from the dwelling on or after July 1, 1986, unless such removal, at the discretion of the Department, is determined to have been due to an emergency.

(11) Method of Repurchase When UFFI Has Been Partially Removed From the Building Before July 1, 1986. If UFFI has been partially removed from the building prior to July 1, 1986 but some of the UFFI remains in the building, 105 CMR 650.222(9) shall govern repurchase of the UFFI that remains in the building, and 105 CMR 650.222(10) shall govern repurchase of the UFFI that has been removed.

(12) Repurchase From the Distributor or Installer. Except as provided in 105 CMR 650.222(2)(a), if an installer has repurchased UFFI from an owner of a UFFI-insulated building, the distributor of the component ingredients of said UFFI shall repurchase UFFI from said installer, and if the distributor has repurchased UFFI from an installer, the manufacturer of the component ingredients of said UFFI shall repurchase UFFI from said distributor, as follows:

(a) by refunding the purchase price paid for these ingredients;

(b) by reimbursing for any amounts paid in connection with the repurchase of these items pursuant to 105 CMR 650.222(9), (10), or (11); and

(c) by reimbursing for any reasonable and necessary expenses incurred in providing reasonable proof of the removal of UFFI as described in 105 CMR 650.222(13).

(13) Method of Repurchase After Removal of UFFI by a Distributor or Installer. Once UFFI has been removed by a distributor or installer, further repurchasing as permitted by 105 CMR 650.222(12) shall not require return of the insulating material. Reasonable proof of removal shall entitle installers and distributors to reimbursement from distributors and manufacturers of component ingredients of UFFI, respectively, as provided in 105 CMR 650.222(12).

(14) Allocation of Responsibility for Refund of the Purchase Price.

(a) Except as provided in 105 CMR 650.222(2)(a), if the distributor repurchases UFFI from an owner of a UFFI-insulated building, the distributor may recover from the installer the difference between the price the installer paid the distributor for the UFFI or the component ingredients of the UFFI in question and the purchase price paid by the retail purchaser to the installer for installation of UFFI into the building in question.

(b) Except as provided in 105 CMR 650.222(2)(a), if the manufacturer repurchases UFFI from an owner of a UFFI-insulated building, the manufacturer may recover from the distributor the difference between the price the installer paid the distributor for the UFFI or the component ingredients of the UFFI in question and the purchase price paid by the distributor to the manufacturer for said UFFI or component ingredients of UFFI. Said manufacturer may also recover from the installer of the UFFI in question the difference between the purchase price paid by the retail purchaser to the installer and the price paid by the installer to the distributor.

(15) Repurchase by Manufacturers. Except as provided in 105 CMR 650.222(2)(a), in the event that component ingredients of UFFI made by more than one manufacturer are removed from a single building pursuant to a single retail sale of UFFI, all manufacturers of ingredients used in that retail sale shall pay equal shares of the cost of repurchase as follows:

(a) Any manufacturer who receives a Certificate of Right to Repurchase pursuant to 105 CMR 650.222(8) shall repurchase UFFI as provided in 105 CMR 650.222(9), (10), or (11);

(b) Said manufacturer shall have the right to recover a portion of the cost of repurchase from any other manufacturer(s) involved.

(16) Notice that UFFI is Subject to Repurchase.

(a) All manufacturers of UFFI or component ingredients of UFFI shall notify each distributor, installer or other person to whom the manufacturer has sold UFFI or component ingredients of UFFI that UFFI is a banned hazardous substance subject to repurchase hereunder. This notice will provide instructions for repurchase of UFFI, and will advise that any distributor who receives the notice is required to provide further notice as specified in 105 CMR 650.222(16). As soon as the distributor receives such notice, the distributor shall, in the same manner, similarly notify each distributor, installer or other person to whom the distributor has sold UFFI.

(b) Each manufacturer of UFFI or component ingredients of UFFI shall publicize a clear and conspicuous Notice of Right to Repurchase as follows, in a manner reasonably calculated to reach as many retail purchasers of UFFI as practicable:

NOTICE OF RIGHT TO REPURCHASE

The Commissioner of Public Health has banned urea-formaldehyde foam insulation (UFFI). If you have UFFI installed in your building, you may be able to require that UFFI be removed at the expense of the manufacturer, distributor or installer and that your purchase price be refunded. For further information concerning your rights, you may contact the Department of Public Health, Division of Environmental Health Services, 150 Tremont Street, Boston, Massachusetts 02111.

(17) Other Rights and Liabilities. Nothing in 105 CMR 650.222 shall be construed as affecting the rights and liabilities of any person other than those rights and

liabilities stated in 105 CMR 650.222. No remedies allowed by 105 CMR 650.222 shall be deemed exclusive.

(18) Pending Repurchase Cases.

(a) All repurchase cases pending before the Department on July 1, 1987 shall be processed by the Department in as expeditious a manner as possible.

(b) The Department shall process each case in accordance with 105 CMR 650.222. Any documents already submitted that are germane to the issue of who supplied the UFFI or any of its component ingredients need not be resubmitted, notwithstanding the availability of altered forms for use in the repurchase process described in 105 CMR 650.222. However, a party shall notify the Department and all other parties if the information contained in any document previously submitted has changed.

(c) The Department shall provide a notice of right to adjudicatory hearing, as set forth in 105 CMR 650.222(3)(a)1. through 3., to every industry member who is or has been identified in each pending repurchase case. Except upon request the Department need not mail or hand-deliver to any person copies of documents which it has previously mailed or hand-delivered to that person in connection with the repurchase case.

(d) Medical information in any case file of a pending repurchase case shall not be considered in any way by the hearing officer or by the Commissioner in issuing their respective decisions. Upon request, said information shall be destroyed or returned to the person to whom it pertains.

(19) The Commissioner or his designee may waive the application of any provision of 105 CMR 650.222 with respect to a particular case when, in his/her opinion, the enforcement thereof would do manifest injustice, provided that:

(a) the party requesting a waiver shall submit written documentation supporting its request; and

(b) the decision of the Commissioner to grant a waiver shall not conflict with the spirit of 105 CMR 650.000.

650.990: Severability

Any section, subsection, paragraph or provision of 105 CMR 650.000 declared illegal or unconstitutional by a court of competent jurisdiction is severable from 105 CMR 650.000.

REGULATORY AUTHORITY

105 CMR 650.000: M.G.L. c. 94B; c. 111; St. 1985, c. 728.

NON-TEXT PAGE

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